

## REMARKS

Claims 1, 2, 4-10 and 15-20, as amended, still remain in this application. Claims 21-29 are hereby added. Claims 3 and 11-14 are hereby canceled.

Reconsideration of the rejection of claims 1, 2, and 4-14 under 35 U.S.C. § 102(b) as being anticipated by Ogawa et al is respectfully requested. As the Examiner is aware, for a claim to be rejected under section 102, the cited reference must teach all of the features recited in the rejected claim. The Ogawa et al reference is particularly directed to medical instruments that utilize an endoscope. It is well known in this technology that the cannula that utilizes the endoscope is not in the same class of cannulas that are wide channeled and by virtue of this channel do not require an endoscope. The type of cannula to which this application is directed is spelled out on page 5, lines 9-13, quoted below for the convenience of the Examiner:

“Obviously, the dilator retractor 30 affords a wide channel for the surgeon to pass his instruments therethrough allowing the surgeon to perform the surgical procedure while providing sufficient opening to permit the use of a microscope and lighting to view the area of the target.”

In contrast to the cited reference, this application is directed to a wide channel cannula (dilator retractor) which is a distinct instrument from the one being described in the Ogawa et al patent. The Examiner will appreciate that the cited reference Ogawa et al is a complicated and convoluted instrument that is intended for use in operations that are similar to or the same as where the present invention can be used. Where, it is believed, applicant's structure is simple and straightforward, the Ogawa et al structure is complex. For example, the present invention utilizes a cannula as the last piece following the last dilator. The dilators are removed and the cannula remains for defining the channel that is used by the surgeon to perform the surgery. The working channel of the cannula is sufficiently wide to allow the surgeon good visibility of the target so that an endoscope is not utilized and to the satisfaction of surgeons, is not needed. This is not a difference without a distinction. This feature in the present invention is, indeed, significant. As a matter of fact, one of the main purposes of the cannula of the present invention is to avoid using an endoscope and to provide the improvements on this type of cannula to enhance the state of this technology. The cannula of the present invention is made from a hard structure. On the other hand what is used in place of the

cannula of the present invention is the sheath (sheath 4, for example as seen in Fig. 1A) which essentially is a soft tube. (See column 11, line 48 which states that the soft tube 3 is a resin tube which is flexible enough to deform). This structure taught in the Ogawa et al patent is entirely different from that disclosed in the present invention.

The claims have been amended to distinguish over the Ogawa et al structure by reciting that the cannula is a wide channel. By the very nature of it being a wide channel, one skilled in this technology will appreciate that the opening is sufficiently large so to allow adequate visualization of the target area of said patient without the need of an endoscope.

Claim 4 recites that the distal end of the dilator retractor (cannula) is contoured to match the bone structure where the procedure is being performed. The Osawa et al teaches on column 40, line 40 a “spatula-like” main body (311) that forms the distal end to conform to the “shape of the bone around a site where a working space is to be secured. The spatula-like main body is not a cannula and is not in any shape, form or manner a cannula. It is neither understood or comprehended how the examiner is rejecting claim 4 or any other claim calling for a cannula with a contour designed to match the contour of the bone as being anticipated by this reference. This clearly is not the intent of 35 U. S. C. §102 that requires that each of the claimed limitations be shown in the cited reference. The subject matter of this claim both to the contour of the distal end and the wide channel cannula is clearly not shown in the cited reference and it clearly is not inherent to one of ordinary skill. Certain claims call for the distal end to be sloped. The Ogawa et al shows a sloped distal end in the dilator that is used to cut through the tissue and muscle. Applicant’s structure avoids the cutting and designs the slope of the distal end to match the bone structure of the patient.

Claims 6 and 10 recite the limitation of “tunnel”. As spelled out in the specification of this application, the tunnel at the distal end of the cannula is for the purpose of being able to perform certain surgical procedure, as for example, installing an implant in the bone of a patient.

It is earnestly submitted that the §102(b) rejection is not proper and should be withdrawn.

Claims 3 and 15-20 were rejected under 35 U. S. C. § 103(a) as being unpatentable over Ogawa et al. It is believed that the Examiner’s arguments are untenable and that these claims patentably distinguish over this reference.

Claim 15 is directed to the overall shape of the dilators and cannula and particularly being

ovoid. Figs. 74B and 74C of the cited reference teach the use of dilators that are elliptical in shape. There is no doubt that the Examiner can find other medical instruments that are elliptical in shape. However, the use of a cannula that is elliptical or ovoid in shape is not shown in the prior art. As understood, the structure in the Ogawa et al instrument is such that a sheath of a soft material is intended to be inserted over the largest of the dilator and of course, will assume an elliptical shape. But once installed in the patient the shape of the soft material will deform to define the channel and it may no longer be elliptical. Be as it may, the shape of the present invention will retain the elliptical contour after it is installed in the body of the patient.

Claim 16 recites a series of dilator retractors having the same contour but being sized differently in length so as to match the depth of the cavity from the skin to the target of the patient. The Examiner acknowledges that Osawa et al doesn't teach this concept and makes light of it by stating that "...It is known in the art to make series of surgical tools in different sizes in order to provide a best fit for a patient during a surgery procedure." The Examiner misses the point. The size isn't to provide the best fit for the patient. The size is to provide the best instrument for the surgeon. The purpose of the present invention is to allow the surgeon to gain access to the target allowing the surgeon to use one or more surgical instruments through the channel while having adequate visualization of the target. Unlike, for example, the size of a pair of gloves that is fitted to the hand of the user is selected to provide a good fit. This is absolutely not the case in this claim. The series of dilator retractors (cannulas) of applicant's invention provides the surgeon a simple and convenient way to match the anatomy of the patient so as to gain access to the target area without the need or use of an endoscope. It is submitted that this is a major contribution in this field of surgery that is not attainable by the Osawa et al teachings.

It is earnestly submitted that the new claims which are directed to the "tunnel" do not introduce new matter and sufficient basis for the claimed language is found in the specification. As mentioned in the above paragraph the tunnel or the lateral passageway is a working channel that can be used by the surgeon to perform certain surgical procedures including the insertion of an implant. The claims are believed to be patentably distinguishable over the cited reference and that it would not be obvious for one ordinarily skilled in this art to arrive at this invention, nor is there any suggestion of this invention in this referenced patent nor is there any motivation to arrive at this invention,


particularly where the primary teachings of Osawa et al is to utilize with the medical instrument of these teachings, an endoscope.

In view of the foregoing, it is believed this application is in condition for allowance and the allowance thereof is respectfully requested.

**Respectfully submitted,**

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